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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,471	10/11/2001	James L. Jason JR.	10559-504001 / P11796	9923
20985	7590	11/17/2005	EXAMINER	
FISH & RICHARDSON, PC			TIV, BACKHEAN	
P.O. BOX 1022			ART UNIT	
MINNEAPOLIS, MN 55440-1022			PAPER NUMBER	

2151

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/976,471	Applicant(s) JASON ET AL.	
	Examiner Backhean Tiv	Art Unit 2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14, 17-24 and 27-34 is/are pending in the application.
- 4a) Of the above claim(s) 15, 16, 25 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 17-24 and 27-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Detailed Action***

Claims 1-14, 17-24,27-34 are pending in this application. Claims 15,16,25,26 have been cancelled. This is a response to the RCE filed on 9/1/05.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 33-34 is not limited to tangible embodiments. In view of Applicant's disclosure, the medium is not limited to tangible embodiments and intangible embodiments. As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14, 17-24,27-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,819,932 issued to Allison et al.(Allison) in view of US Patent 6,662,230 issued to Eichstaedt et al.(Eichstaedt).

As per claim 1,12,20,24,31,33 Allison teaches a method comprising:

Art Unit: 2151

generating information, at first and second points of a network, about unwanted communications passing through the first and second points from a source and directed to a target device(Figs.1-9, col.2, lines 20-67, col.4, lines 56-67,); analyzing the information generated at the first and second points to identify which of the points first carried the unwanted communications(col.9, lines 44-59); blocking communications passing through the first network to the second network(col.4, lines 37-55); monitoring communications passing through at least a first and second point on a path from a source sub-network to a target device(Figs.1-9, col.2, lines 20-67, col.4, lines 56-67).

Allison however does not explicitly teach the unwanted communications being adapted to reduce the ability of the target device to respond to other communications.

Eichstaedt teaches the unwanted communications being adapted to reduce the ability of the target device to respond to other communications(Abstract, Fig.1, col.5, lines 39-42, col.6, lines 21-35).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Allison to teach the unwanted communications being adapted to reduce the ability of the target device to respond to other communications as taught by Eichstaedt in order to deny requests by clients whose request significantly reduce server performance(Eichstaedt, col.1, lines 5-15).

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Allison and Eichstaedt in order to provide a system to deny requests by clients whose request significantly reduce server performance(Eichstaedt, col.1, lines 5-15).

As per claim 2, the method of claim 1, also including detecting the direction of the unwanted communications(Allison, col.4, lines 56-67, Eichstaedt, col.3, line 41-59).

Motivation to combine set forth in claim 1.

As per claim 3, the method of claim 1, also including identifying the target device(Allison, col.4, lines 56-67, Eichstaedt, col.3, line 41-59). Motivation to combine set forth in claim 1.

As per claim 4, 17,18,27 also including statistically analyzing the communications to determine if an uncharacteristically large number of communications have passed through at least one of the network points(Eichstaedt, col.3, line 60-col.4, line 18).

Motivation to combine set forth in claim 1.

As per claim 5,22,30, also including statistically analyzing the communications to determine when an uncharacteristically large number of communications have been targeted toward the target device(Allison, col.4, lines 56-67, Eichstaedt, col.3, line 60-col.4, line 18). Motivation to combine set forth in claim 1.

As per claim 6, 19 also including correlating communications request messages with acknowledgement messages(Eichstaedt, col.11, lines 10-13).

As per claim 7, the method of claim 1, also including communicating information about the unwanted communications to brokers(Allison, col.4, lines 56-67, Abstract, Eichstaedt, Abstract). Motivation to combine set forth in claim 1.

As per claim 8, the method of claim 7, also including communicating information about the unwanted communications among brokers(Allison, col.4, lines 56-67, Abstract, Eichstaedt, Abstract). Motivation to combine set forth in claim 1.

As per claim 9,13,23,28,29 also including blocking a portion of communications passing through the point through which the unwanted communications originated(Allison, col.4, lines 35-68, Eichstaedt, col.3, line 41-col.4, line 67). Motivation to combine set forth in claim 1.

As per claim 10, 14 also including blocking a portion of communication request messages passing through the point through which the unwanted communications originated(Allison, col.4, lines 35-68, Eichstaedt, col.3, line 41-col.4, line 67).

As per claim 11, the method of claim 1, in which the target device comprises a web server(Eichstaedt, col.3, line 41-col.4, line 67). Motivation to combine set forth in claim 1.

As per claim 21, in which the communications analyzer also includes:  
an interface monitor corresponding to each interface device; and  
a communications link between the interface monitors(Eichstaedt, col.3, line 39-col.4, line 67). Motivation to combine set forth in claim 1.

As per claim 32, 34 also capable of configuring a computer to block a portion of the communications passing through the point that first carried the unwanted communications(Allison, col.4, lines 35-68, Eichstaedt, col.3, line 41-col.4, line 18).  
Motivation to combine set forth in claim 1.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-14, 17-24,27-34 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Art Unit: 2151

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

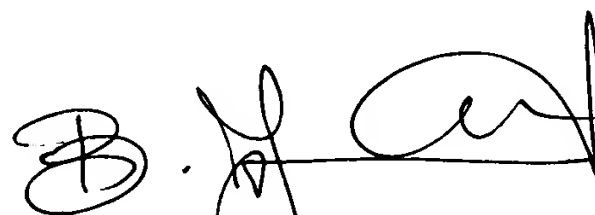
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Backhean Tiv whose telephone number is (571)272-3941. The examiner can normally be reached on 9 A.M.-12 P.M. and 1 -6 P.M. Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Backhean Tiv  
2151  
11/12/05

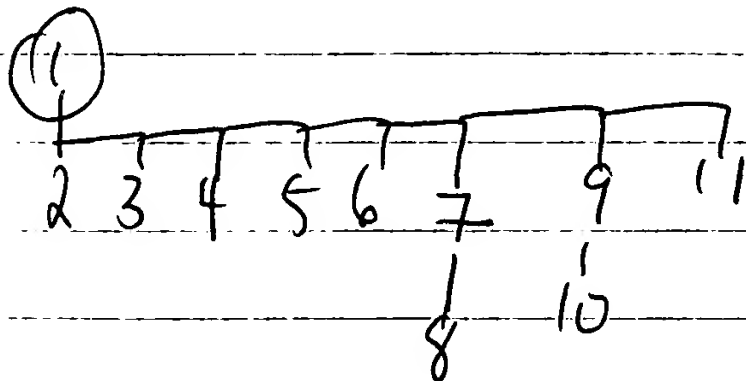


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PRIMARY EXAMINER

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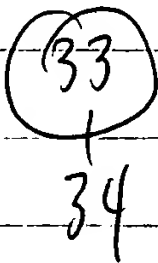
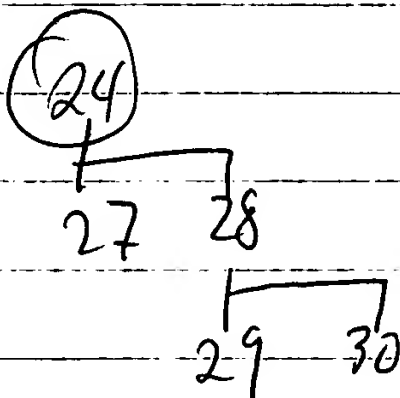
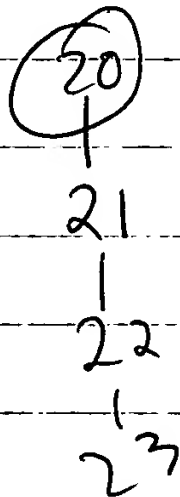
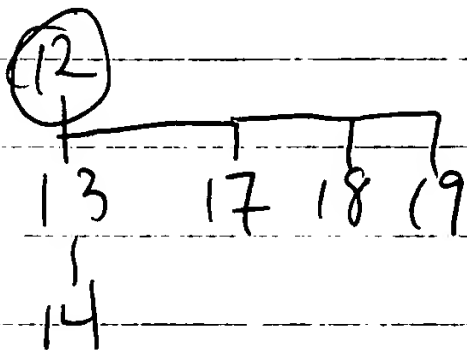
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Canceled

15, 16, 25, 26



look at 33 for possible 101